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POSTAL RATE COMMISSION
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UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

PRESIDING OFFICER'S
RULING NO. R97-1/17

Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING GRANTING IN PART
MOTION OF UNITED PARCEL SERVICE TO COMPEL
PRODUCTION OF INFORMATION AND MATERIALS
REQUESTED IN INTERROGATORY UPS/USPS-T29-11

(September 11, 1997)

On August 28, United Parcel Service submitted a motion to compel production of information and materials requested in its interrogatory UPS/USPS-T29-11. That interrogatory asks the Postal Service to "provide the results to date (costs, revenues, volumes, etc.) of the Priority Mail pre-barcoding experiment that is the subject of Docket No. MC96-1." The Postal Service filed an objection on August 14, taking the position that the requested information is completely irrelevant to this proceeding, that its production would reveal proprietary and pre-decisional information, and would also produce a chilling effect on the Service's willingness to test new product offerings, to the detriment of the mailing public.

In its Motion to Compel, UPS argues that the requested information is directly relevant to the Service's proposal of a 4-cent per piece discount for Parcel Post pre-barcoded parcels in this proceeding. Noting similarities in the eligibility requirements for this proposed category and the pre-barcoded category of First Class/Priority Mail parcels eligible for participation in the experiment recommended in MC96-1, and the identical 4-cent per piece discount applicable to both categories, UPS argues that the data collected in the MC96-1 experiment are relevant to the "identical proposal for

Parcel Post packages[,]” and will provide a basis for evaluating the “identical proposed discount.” UPS Motion to Compel at 4.

UPS also disputes the Postal Service’s claim that the requested information is privileged. According to UPS, there is no pre-decisional privilege for the Postal Service to assert in these circumstances, and its argument on that ground is without merit. Moreover, UPS argues, even if the Service’s claim were likened to an assertion of the deliberative process privilege, that privilege would be not be available here because the interrogatory seeks purely factual information, rather than the opinions and recommendations underlying governmental decisionmaking which the privilege protects. *Id.* at 5-6.

In its Opposition to the UPS motion filed September 4, the Postal Service reasserts its arguments that the information sought is entirely irrelevant to this proceeding and consists of pre-decisional material that should not be released.¹ The Service disputes the asserted nexus between its proposed discount for pre-barcode Parcel Post parcels in this case and the discounted category recommended in MC96-1, observing that the two discounts were derived differently, have different operational bases, and are not identical as to machinability and other eligibility requirements. Postal Service Opposition at 2-4.

On the subject of privilege, the Service claims that even the production of factual material prior to postal management’s decision on the future of the experimental Priority Mail/First-Class parcel discount “may tend to suggest a preordained outcome and may allow outside influences to be brought to be on management’s decision.” *Id.* at 4. Thus, open discussion of legal and policy issues by postal decisionmakers would be

¹ The Postal Service also suggests that the interrogatory’s request for Priority Mail “cost, revenues, volumes, etc.” for the experiment is overbroad.

inhibited.² The Service also argues that, given the limited number of test sites, “it is highly likely that no matter how the Postal Service sought to mask any mailer identities, the volumes associated with particular mailers would be relatively simple to decipher.” *Id.* at 5. Neither the Commission’s experimental rules nor its Recommended Decision in MC96-1 requires the Service to report any results of the experiment, the Service contends, and forcing the Service to disclose results under these circumstances will curb its willingness, and that of mailers, to engage in other experimental endeavors. *Id.* at 5-6. The Service also argues that, should it decide to request that the experimental discounts be made permanent, “the data underlying its case will have been released early, to the detriment of its litigating position.” *Id.* at 6.

I agree with the Postal Service’s arguments that UPS’ specific claims of the relevance of the requested information to this proceeding are unconvincing, and that whatever attenuated relevance the requested information may have to the Service’s proposed discount for pre-barcode Parcel Post is overshadowed by the sensitivity of disaggregated data from the few sites where the experimental First-Class/Priority parcel discount is available. As the Service observes, operational and other potential differences cast doubt upon the direct comparability – and thus the ultimate relevance – of the experimental results to the projected costs, volumes and other features of the discounted pre-barcode Parcel Post category proposed in this case. On the other side of the balance, disclosure of disaggregated results of an experiment conducted at very few sites could both compromise the experiment’s value to the Postal Service and virtually identify certain mailers participating in it.

Nevertheless, in an omnibus rate proceeding such as this, it is appropriate for the Commission to consider all available information regarding the sources of Postal Service revenues and costs in performing its statutory ratemaking responsibilities. See

² The Service also notes that, in Docket No. R90-1, the Presiding Officer did not require the Postal Service to disclose minor changes in configuration nor additions of cities to the Eagle Network, which were under consideration at the time. *Id.* at 4, n. 3.

PRC Op. R94-1, November 30, 1994, paras. 1083-84. Thus, even though the Postal Service requests no change in the discount applicable to the experimental pre-barcode parcel category, or classification change, in the context of this case, information concerning its associated costs, volumes and revenues is germane to the issues of cost recovery and revenue sufficiency. The experimental status of the category does not obviate the relevance of this information. Indeed, the Postal Service has at least implicitly recognized the relevance of such information by providing in its direct case the projected cost, volume and revenue consequences in the test year of introducing the packaging service that is the subject of its recently-filed Request in Docket No. MC97-5, in which the Service requests its establishment on a provisional basis.³

Consequently, I shall direct the Postal Service to produce summary cost, volume and revenue information responsive to the UPS interrogatory. Production of this information in aggregate form should allay the Postal Service's concerns regarding site-specific information and mailer identity.

RULING

The Motion of United Parcel Service To Compel Production of Information and Materials Requested in Interrogatory UPS/USPS-T29-11, filed August 28, 1997, is granted in part, as specified above.


Edward J. Gleiman
Presiding Officer

³ See Direct Testimony of Thomas M Sharkey, USPS-T-33, at 23, ll. 21-23; Direct Testimony of Virginia J. Mayes, USPS-T-37, at 23. The Postal Service's Request for establishment of a provisional packaging service was filed on July 29, 1995. See Docket No. MC97-5, Order No. 1188, July 31, 1997.